

MAR 13 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**DEBORAH JOHANNES, as Trustee of
The Connie Von Rudeen Living Trust
dated 1/16/02,**

Plaintiff - Appellant,

v.

**BARRY KARANT; SHONI G.
HETLAND; ADVANCED
PROPERTIES PLUS,**

Defendants - Appellees.

No. 07-15986

D.C. No. CV-05-01088-PMP

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Philip M. Pro, District Judge, Presiding

Submitted March 11, 2009**
San Francisco, California

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: **KOZINSKI**, Chief Judge, **NOONAN**, Circuit Judge, and
EDMUNDS,^{***} District Judge.

Barry Karant, Shoni Hetland and Advanced Properties Plus are prevailing parties because the district court granted their motion for summary judgment. Wyatt v. Terhune, 315 F.3d 1108, 1119 (9th Cir. 2003) (summary judgment is decision on merits); Rio Properties, Inc. v. Rio Int'l Interlink, 284 F.3d 1007, 1021–23 (9th Cir. 2002) (parties prevail when judgment is entered in their favor). As prevailing parties, they are entitled to reasonable attorney's fees under the fees provision of their contract with Johannes. Nothing in the record suggests the contract was rescinded and, even if it were, the fees provision would survive. Mackintosh v. Cal. Fed. Sav. & Loan Ass'n, 935 P.2d 1154, 1162 (Nev. 1997). There is no support for Johannes's contention that Karant and Hetland were not parties to the contract.

The district court did not abuse its discretion in setting the fee award; that Johannes's legal fees are lower than Advanced's, and that Karant sought separate representation, do not prove that the fees awarded were unreasonably high. See Brunzell v. Golden Gate Nat'l Bank, 455 P.2d 31, 33 (Nev. 1969).

AFFIRMED.

^{***} The Honorable Nancy G. Edmunds, United States District Judge for the Eastern District of Michigan, sitting by designation.